IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14819 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHENDRA V. VYAS - Petitioner(s)
Versus
GANTAKARNA MAHAVIR ARADHNA TEMPLE TUST & 11 - Respondent(s)

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Appearance :

MR MRUGEN K PUROHIT for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1,5 - 6.
DELETED for Respondent(s) : 2 - 4, 7,
SERVED BY AFFIX.-(R) for Respondent(s) : 8, 10,
RULE SERVED for Respondent(s) : 9,11 - 12.

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 12/07/2006

ORAL JUDGMENT

1. By filing instant petition under Article 227 of the Constitution, the petitioner seeks to challenge

the order dated 22.6.2005 recorded below application Ex.258 in Regular Civil Suit No.912 of 1984 by the learned 2nd Joint Civil Judge (SD), Rajkot by which the application Ex.258 filed by the petitioner under the provisions of Order 6 Rule 17 and Section 151 of the Code of Civil Procedure ('the Code' for short) for permitting him to amend the written statement filed at Ex.18 has been partly allowed and some of the averments made in the application were permitted to be added in the written statement whereas some of the averments made in the application were not permitted to be added in the written statement.

2. Having heard Mr. Mrugen Purohit, learned advocate of the petitioner and having perused the order impugned along with the application seeking amendment in the written statement, according to this court, the trial court ought to have allowed the application in toto because the averments which have not been allowed to be added in the written statement are consequential in nature. When the trial court has allowed the main averments to be added in the written statement then there is no reason to disallow the consequential averments made in the application.

3. Seen in the above context, this petition deserves to be allowed by granting the application Ex.258 in toto.

4. For the foregoing reasons, the petition succeeds and accordingly it is allowed with no order as to

costs. The order dated 22.6.2005 recorded below application Ex.258 in Regular Civil Suit No.912 of 1984 by the learned 2nd Joint Civil Judge (SD), Rajkot is modified and thereby the petitioner is permitted to carry out the amendment in written statement filed at Ex.18, as per the averments made in application Ex.258. The petitioner shall carry out the amendment within a period of two weeks from the date of receipt of this order by the trial court. On the amendment being carried out by the petitioner, the learned trial Judge shall proceed with the hearing of the suit and decide the same in accordance with law as expeditiously as possible.

Rule is made absolute accordingly.

(A.M. Kapadia, J.)

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